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UNITED BEHAVIORAL HEALTH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID WIT, et al.,

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,

Defendant.

Case No. 14-CV-02346-JCS
Related Case No. 14-CV-05337-JCS

**DEFENDANT UNITED BEHAVIORAL
HEALTH'S UNOPPOSED
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE A SUR-REPLY**

Hon. Joseph C. Spero

GARY ALEXANDER, et al.,

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,

Defendant.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to Civil Local Rule 7-11 and the Court's February 21, 2021 Order Granting
 3 Stipulation Extending Briefing Schedule for Plaintiffs' Motion for Attorneys' Fees and Expenses,
 4 Defendant United Behavioral Health ("UBH") hereby moves for leave to file a Sur-Reply in
 5 opposition to Plaintiffs' Motion for Attorneys' Fees and Expenses. (ECF No 543.) Specifically,
 6 UBH seeks to file a Sur-Reply on or before March 22, 2021 to address Plaintiffs' request for
 7 expenses based on the approximately 7,100 pages of evidence submitted by Plaintiffs with their
 8 Reply Brief in support of their Motion for Attorneys' Fees and Expenses. Plaintiffs do not oppose
 9 UBH's request or the relief sought herein.

10 Courts regularly grant leave to file sur-replies under such circumstances. "If a party raises
 11 a new argument or presents new evidence in a reply brief, a court may consider these matters only
 12 if the adverse party is given an opportunity to respond." *See Banga v. Experian Info. Sols., Inc.*,
 13 No. C 09-04867 SBA, 2013 WL 5539690, at *3 (N.D. Cal. Sept. 30, 2013). Accordingly,
 14 "[s]urreplies are often granted when a new argument or new evidence is presented in a reply
 15 brief," especially where "the content of the Surreply is discrete and will not necessitate further
 16 briefing." *S.E.C. v. Goldstone*, No. CIV 12-0257 JB/LFG, 2014 WL 6065611, at *2 (D.N.M.
 17 Nov. 4, 2014); *see also Clark v. Bumbo Int'l Tr.*, No. 15 C 2725, 2017 WL 3704825, at *3 n.5
 18 (N.D. Ill. Aug. 28, 2017) ("Because the surreply is brief, confined to the two discrete issues, and
 19 responds appropriately to the reply, the Court grants Bumbo's motion for leave to file the
 20 surreply."). *Compare id.*, with *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 857-58
 21 (N.D. Ill. 2015) (denying leave where the proposed sur-reply simply "respond[ed] (again) to [the
 22 defendant's] core arguments," "spen[t] seven of the eight pages . . . responding to" those core
 23 arguments, and where the defendant "included this argument in its opening brief").

24 UBH's proposed Sur-Reply checks all of these boxes. It is undisputed that Plaintiffs
 25 submitted voluminous amounts of new evidence with their Reply brief. (*See* ECF No. 542.) UBH
 26 has not yet had a fair opportunity to address this new evidence and related arguments. UBH will
 27 be prejudiced if the Court considers this evidence without affording UBH the chance to respond
 28 to it. "Such a result would be unfair." *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996); *see*

1 also *United States v. Venture One Mortg. Corp.*, No. 13-CV-1872 W (JLB), 2015 WL 12532139,
2 at *2 (S.D. Cal. Feb. 26, 2015) (“If the Court is to consider the new evidence and arguments in
3 Defendant’s reply brief, it must give Plaintiff an opportunity to respond.”). In light of the
4 foregoing, UBH respectfully requests that the Court grant UBH leave to file its Sur-Reply on or
5 before March 22, 2021 to address the new evidence filed in support of Plaintiffs’ request for
6 expenses.

7
8 Dated: March 12, 2021

CROWELL & MORING LLP

9 /s/ Jennifer S. Romano

10 Jennifer S. Romano

11 Attorneys for UNITED BEHAVIORAL HEALTH
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